debt was satisfied by merger of his lien in the estate redeemed. *Miller* v. *Little* (N. D. 1917), 164 N. W. 19.

Sprague v. *Martin,* 29 Minn. 226; *Work* v. *Braun,* 19 S. D. 437, *accord; Emmet's Adm'rs.* v. *Bradstreet,* 20 Wend. 50; *Van Horne* v. *McLaren,* 8 Paige 285 *contra.* It is elementary that the effect of foreclosure is to cut off all subsequent liens. This the North Dakota Code in effect provides. See CODE 1905, Sec. 7467. Consequently there could be no merger of the lien extinguished by foreclosure, with the title which arose from the foreclosure. The two interests were not coincident but consecutive. The better theory for the result contended for in this case is laid down in *Sprague* v. *Martin, supra.* The object of the redemption statute is to make the land bring its utmost value as far as creditors will voluntarily apply it in satisfaction of their debts. To accomplish this the foreclosure sale is held in suspense for a period during which a junior leinor may take over the rights of the purchaser and hold them, first for reimbursement of the redemption money, second, for satisfaction of his debt, to the extent of the value of the land. In other words, the junior lienor is a privileged bidder on the foreclosure sale, entitled to come in after the hammer has fallen and bid "the last bid plus the value of the excess value of the land, if any, up to the amount of my debt". If such redemptioner is not redeemed by another, he takes the title which would have gone to the original purchaser. But, as the amount of his bid is indefinite, the effect of the transactions upon his debt depends upon the value of the land, a matter which is the proper subject of proof whenever the question may arise, as it does when he sues upon his debt. To this extent the proceeding takes on the aspect of a strict foreclosure. The opposite conclusion has been reached by the New York Courts in the cases *supra,* they adhering both at law and in equity to a literal interpretation of the statute which gives the redemptioner the same title as the purchaser thus cutting off his lien and leaving his debt unsatisfied. While the Minnesota doctrine is in effect an enlargement of the statute it is a very satisfactory interpretation of the legislative intent.

NEGLIGENCE—FALLING OF A CORNICE—LIABILITY OF OCCUPIER.—Plaintiff, a news vender went to the home of defendant to collect for papers delivered during the preceding week. While standing on the steps, he was injured by the falling of a projecting cement cornice. At the trial, plaintiff admitted that defendant did not know of the defect and that the premises were apparently in good repair. *Held,* defendant was not liable. Plaintiff should have given some evidence to show what precautions are usual and proper for occupiers of houses with projecting cornices and that defendant failed to take them. *Pritchard* v. *Peto,* [1917], 2 K. B. 173.

In this case the court refused to apply the doctrine of *res ipsa loquitur* and based its decision upon the rule that an invitee is entitled to expect an occupier to use reasonable care to prevent damages from unusual dangers of which he knows or ought to know. *Indermaur* v. *Dames,* 36 L. J. C. P. 181. There can be little doubt that the plaintiff is correctly classified as an invitee. An invited person is one who has either an express invitation from the occu-

pant, or who comes under an implied invitation arising from the fact that the object of his visit is one in which he and the occupant have mutuality of interest. *Bennett* v. *Railroad Co.,* 102 U. S. 577; *Norris* v. *Nawn Contracting Co.,* 206 Mass. 58. But there may be some question as to whether the court was justified in requiring the plaintiff to put in evidence "to show what precautions are usual and proper" under the circumstances. The burden of proving negligence was upon the plaintiff who placed his reliance upon the doctrine of *res ipsa loquitur,* which means that the facts of the occurrence warrant an inference of negligence. It does not shift the burden of proof. *Sweeney* v. *Erving,* 228 U. S. 233. But the attendant circumstances which justify the inference must be proved and not left to mere speculation, and the inference to be drawn must be the only one reasonably and fairly to be drawn therefrom. *Ruppert* v. *Brooklyn Heights R. R. Co.,* 154 N. Y. 90. The mere falling of a cornice does not raise such an inference of negligence unless it be supported by evidence showing that the exercise of reasonable diligence would have disclosed the defective condition of the cornice. The decision in the principal case is in accord with *Hollander* v. *Hudson,* 152 (N. Y.) App. Div. 131, which presents an analogous situation. The principal case must also be distinguished from those in which the falling object injures a person on the highway, where the action is more properly one of nuisance.

SPECIFIC PERFORMANCE OF CONTRACT—CONTRACT UNENFORCIBLE.—Between the date of execution of a contract to purchase land, which was to be used for business purposes by defendant, the prospective purchaser, and the date of consummation of the contract, the use of land in that vicinity for other than residential purposes was prohibited by a resolution of the city board of estimates. *Held,* specific performance of the contract would not be decreed against the purchaser because, in view of the resolution, the decree would be inequitable. *Anderson* v. *Steinway & Sons,* (N. Y., 1917), 117 N. E. 575.

Instances of a subsequent event not reasonably to be anticipated at the time the contract was executed are seen in *Willard* v. *Tayloe,* 8 Wall. 557, where, by an act of Congress, bank notes were substituted for gold and silver as legal tender, the latter being legal tender at the time the contract was made; in *Gotthelf* v. *Stranahan,* 138 N. Y. 345, where assessments for grading and paving streets were levied on property after the execution of a contract in regard to said property; in *Gamble* v. *Garlock,* 116 Minn. 59, where fire destroyed the house on the premises previously contracted to be sold; in *Richardson Shoe Mach. Co.* v. *Essex Mach. Co.,* 207 Mass. 219, and in *Triumph Electric Co.* v. *Thullen,* 228 Fed. 762, where the situation of the parties to the contract was radically changed after the date of the execution of the contract. The instant case follows *Willard* v. *Tayloe, supra* and *Gotthelf* v. *Stranahan, supra,* saying it is not distinguishable on principle.